

## Welcome to the latest edition of our Highlight

magazine, aimed at updating our clients on legal and firm news. This edition, we provide a focus on the fishing industry, to coincide with the return of the Skipper Expo International to Aberdeen for the fourth consecutive year, on 30–31 May 2014.

Perhaps foremost of issues in industry participants' minds this year, is the one to be put to vote on 18 September 2014. Whatever the outcome, it will be important that the fishing industry continues to make its voice heard in government at both national and international levels. In this edition of Highlight, we'll examine some of the legal arguments concerning an independent Scotland's membership of the European Union and the impact this might have on the fishing industry in particular.

Our Employment team will provide a review of a recent United Kingdom Employment Tribunal decision, which has broadened the ambit of UK Employment Law. Consideration of this decision is vital for industry employers

and employees alike, whether operating in UK waters or not.

In addition, our property and private client teams offer an outline of the services, which Mackinnons provide mostly from our Cults and Aboyne offices. In the areas of property, tax, wills and estate planning, Mackinnons has a number of experts on hand to meet the personal legal needs of our clients. Despite our strong foundations in Marine Law, Mackinnons may be more multi-faceted than you believe.

As always, this publication is for the benefit of our clients and, while hopefully there is something of interest and assistance for everyone, we are always pleased to hear your feedback and suggestions for future topics and discussions.

Wishing you well.

**Graham Jones** *Partner*  
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We will be at the Skipper Expo on 30–31 May 2014. Please come and visit us at stand 40.

ISSUE **05**

## An update from Mackinnons

Since the Fishing Show in 2013, Mackinnons have followed our mantra of not standing still. Charitable Runs in both the Balmoral 10k and Aberdeen Baker Hughes 10k by several staff members bear testimony to that!

We have been delighted to welcome **Sarah Murdie** as our new **Assistant Solicitor** within the **Litigation and Dispute Resolution Department**. Sarah joins us with a strong background in insurance reparation claims, having previously worked in Dundee.

Within our **Employment Department**, **Nicola Gray** has been promoted to *Associate*, representing just reward for her work since joining the firm.

Various speaking engagements have been well received since the start of the year. In March, Bruce Craig delivered informative seminars at the prestigious IIR Chartering Conference in Houston. The importance of revising terms in any charterparty agreement cannot be over-emphasised.

We were also delighted to host a North Sea Legal Update for our clients, in the striking surroundings of the Marine Operations Centre – our thanks to the Aberdeen Harbour Board for the use of this impressive facility.

In addition, at this month's All Energy Renewables Conference, both Kirstin McPherson and Bruce Craig contributed lively platform presentations at the request of the organisers. The Renewables market remains a growth area within the marine sector and we welcome client enquiries in this regard.

Should any of these seminars interest you, please contact our **Practice Manager, Nicola Elder**, for copies of the presentations.



Baker Hughes 10K Team



Sarah and Nicola

## Not working in UK waters but still protected by UK Employment Law?

The Employment Appeal Tribunal (EAT) case *Hasan -v- Shell International* shows that, following the introduction of the 2013 Employment Tribunal Rules, it may be easier for an individual to bring a claim before the UK Employment Tribunal (ET) than it was before.

The right to bring a claim before an ET (in the UK) largely depends a) on the type of claim and b) whether the individual was working in the UK. For seafarers, this was generally determined by looking at whether the employee was working on the UK Continental Shelf; was joining and/or leaving a vessel at a UK port; or whose employment was more closely connected to the UK than any other legal system. However, the case of Mr Hasan has indicated that with the new ET Rules which came into force on 29th July 2013, the reach of the UK ETs may be greater than it once was.

Mr Hasan was a mariner who brought claims for unfair dismissal, discrimination and breach of contract. He claimed against his Singaporean employer, the London based vessel owner and the crew management company in the Isle of Man. The ET refused to hear Mr Hasan's claims because he did not work aboard a vessel or in an establishment "in the UK". Also, in relation to Mr Hasan's breach of contract claim, the ET concluded that the breach of contract (the issuing of his dismissal letter) occurred outside the UK (because it was sent from the Isle of Man) and the ET therefore did not have jurisdiction to hear that claim either. Mr Hasan appealed against the ET decision but was unsuccessful at the EAT. However, the judge at the EAT stated that had he been able to decide jurisdiction on the grounds of where the employee was "based", he would have decided that the ET had jurisdiction to hear the claims. These comments are important when considered in light of the new ET Rules.

Rule 8 of the 2013 ET Rules states that to establish jurisdiction, the Claimant will be required to show that:

- The Respondent, or one of the Respondents, resides or carries on business in England and Wales/Scotland;
- One or more of the acts or omissions complained of took place in England and Wales/Scotland;
- The claim relates to a contract under which the work is or has been performed partly in England and Wales/Scotland, or
- There is a connection with Great Britain and the connection in question is at least partly a connection with England and Wales/Scotland.

Employers should be aware that the re-wording of the "jurisdiction rule" has made it easier for individuals to demonstrate that whilst they may not be routinely working in the UK, they may still be covered by UK Employment Law. Employers must therefore exercise care when making decisions which could affect employees in order to ensure that they are not caught by the now extended reach of the UK Employment Tribunal.



Nicola Gray – Associate

# An Independent Scotland and the European Union

As we all know, on Thursday 18 September 2014, those of us resident in Scotland and aged 16 or over (with a few exceptions) will have the opportunity to vote on Scottish independence.

Possibly the most important consideration in the minds of those in the fishing industry will be whether or not Scotland shall remain in the European Union in the event of a "Yes" vote.

The position of the Scottish Government is that membership of the EU can be negotiated during the period before Scotland becomes independent. This would enable Scotland to become a member at the point of independence.

The UK Government on the other hand considers that there is a strong case that Scotland would have to go through an accession process and that it could not be guaranteed this would be completed within the Scottish Government's timeframe.

Legally, the position is unclear. Article 49 of the Treaty of the European Union provides the legal basis for an applicant state to become an EU member. The Scottish Government argues however that because Scotland is already a member (as part of the UK), the pertinent Article is rather Article 48 concerning Treaty amendments, which history suggests is a less drawn-out procedure.

Ultimately however, whatever the law is, the issue of an independent Scotland's EU membership will in all probability be determined politically. As James Crawford SC, Professor of International Law at the University of Cambridge, and Alan Boyle, Professor of Public International Law at the University of Edinburgh, have put it, "Scotland's position within the EU is more likely to be shaped more by any agreements between the parties than by pre-existing principles of EU law".

Consequently, the key issue if the vote is "Yes" is, in fact, more likely to be over the terms of membership an independent Scotland negotiates. That is beyond the realms of a purely legal analysis. Suffice it to say that the scope of such negotiations may well be influenced by the Article they are taken forward under and this in itself could prove the first negotiating point.



Angus Easton – Solicitor

## Scotland and the Sea – What if ...?

As the Independence Referendum on 18th September draws closer the economy, currency, membership of the European Union, tax and welfare are all high on the agenda but, with a coastline from Berwick to the Solway, what about Scotland and the Sea?

We hear plenty about oil but the fishing industry only hit the headlines when Alex Salmond spoke about the consequences of an independent Scotland not being admitted to the EU.

I have long believed that shipping and fishing are low on the list of priorities of UK Governments. If it takes the independence debate to highlight the importance of offshore oil, what chance do shipping and fishing have?

So, time for some crystal ball gazing...

The "Scotland's Future" White Paper from the Scottish Government is a weighty document but what it says about Fisheries is limited to a few paragraphs. The intention is that Scotland will stay in the EU but have a more prominent seat at the negotiating table. There is no radical change proposed and Scotland would remain part of the Common Fisheries Policy which it would seek to reform. An independent Scotland would seek to protect Scotland's fishing quotas and prevent quota being permanently transferred outside Scotland while receiving a bigger share of the European Fisheries Fund allocation based on Scotland's greater share of UK landings.

So what's new? The Common Fisheries Policy has caused debate and division among Scottish fishermen for generations now so will independence improve matters? Being able to put our own case and to negotiate directly in Scotland's interest should lead to a bigger slice of the EU cake but wiser men than I will judge whether that is likely or not.

What about the other aspects of shipping policy? Again, the White Paper does not have a lot to say. In the Transport Section of Chapter 3 it says – "We can ensure that Scotland's Maritime Institutions – such as the Coastguard – are structured efficiently and meet the needs of users of Scotland's unique seas and complex coastline."

Road, air and rail transport get attention but surely independence is an opportunity to promote and develop Scottish shipping. Aberdeen has Scotland's busiest harbour with thousands of visits by Norwegian registered vessels every year. Shouldn't we be trying to match these numbers?

The White Paper suggests that all is well with "Scotland's Maritime Institutions". We have recently undergone major changes in the Coastguard service, with the closure of stations and debate about coverage is. If Scotland does vote Yes, there should be a review to establish what Scotland needs. The Marine & Coastguard Agency appears under-resourced and we could do better.

So, what if....? For the fishing industry there is the promise of a bigger say and more influence. For the shipping sector generally, it looks like much of the same.

If so, that's a shame. If Scotland does become independent, there is a real opportunity to promote and develop the general shipping and fishing industries to our advantage. Let's hope that there is the vision to take that opportunity.



Keith MacRae – Partner

# More than just Marine

For many of you reading this edition of Highlight, the name Mackinnons will have connotations of the sea, whether that may be in the form of harbour law, fishing quotas, offshore incidents or the like. But now, more than ever before, Mackinnons has increased its expertise beyond the traditional harbour, shipping and marine insurance work for which we have, quite rightly, become known as experts over the years.

Operating primarily from our Cults and Aboyne offices, we have a number of experienced professionals who can advise our business and corporate clients on their own personal affairs. Expert advice on all facets of private client work, including wills, powers of attorney, guardianships as well as tax and estate planning is also available from all of our offices. We have an award winning property and estate agency team, who can offer expert advice on all aspects of home property ownership including property buying, selling, leasing and buy-to-let investment.

The success of our firm has seen our business grow and expand, something we are extremely proud of. The firm-wide ethos of Mackinnons, however, remains the same. It is integral to our operation that every client, no matter how busy we are, feels as though their business is as important to us as it is to them. Our teams of legal professionals are large enough to have the required level of expertise to advise on a broad range of services, yet small enough to ensure that relationships with our clients remain a priority.

Within our property and private client teams, we encourage our clients to provide feedback on the service they receive. Below are some examples of testimonials we have recently received:

*"As relatively new customers of Mackinnons we have been impressed by your most professional and local service. All staff are pleasant, friendly and easy to approach and work with. Thank you and well done!!"*

*"I can find no fault in any part of the service you provided for us. What more can I say... I love you all!"*

*"Excellent advice provided. I asked all sorts of questions and all were answered. No stone was left unturned!"*

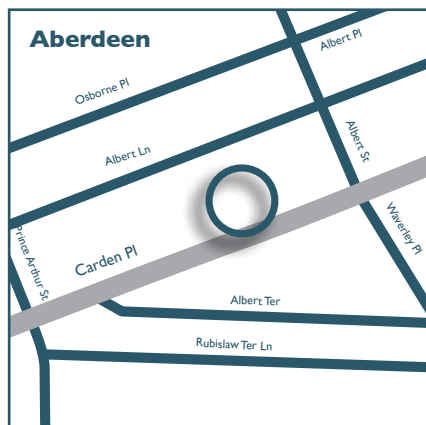
*"I have always found Mackinnons to provide an excellent service to their clients. Mrs Gray always listens and acts professionally at all times. The staff are all helpful and very pleasant at Cults and Mrs Gray is very approachable and caring"*

So the next time you need the services of an excellent legal team to assist you in your personal law or property related matters, think **Mackinnons – we're more than just Marine.**



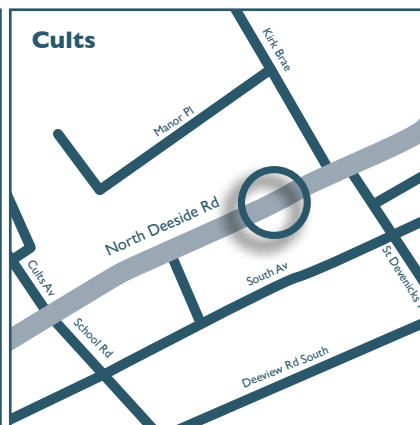
Pat Gray – Property and Private Client Partner

## Offices located at:



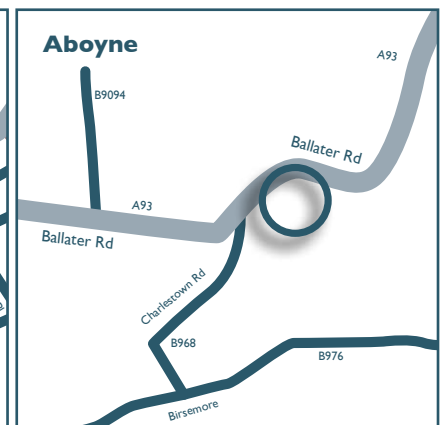
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379 North Deeside Road  
Cults, Aberdeen AB15 9SX

Tel: 01224 868687



Ballater Road  
Aboyne, Aberdeenshire AB34 5HN

Tel: 013398 87665



## Consular Services

Mackinnons partner, Keith MacRae, is the Honorary Norwegian Consul and Danish Vice Consul and Fiona Stevenson is the Honorary Norwegian Vice-Consul in Aberdeen.

Our consular services include:

- Mustering crew for Norwegian vessels, ship authorisations and Change of flag for Norway;
- Danish passports for children up to 12 years old
- Danish Emergency Passports
- Laissez Passer documents for Denmark
- Norwegian passports for children up to 12 years old
- Norwegian Travel Documents

In addition, general consular services and assistance are offered to Norwegian and Danish citizens and businesses in the North East of Scotland.

